

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
07/13/2001

*** FILED ***
07/19/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000023
Docket Code 512 Page 1
FILED: _____

STATE OF ARIZONA
v.
DIRK SIMMONS

CARRIE M COLE

BRIAN F RUSSO

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #9905627

Charge: 1. DISORDERLY CONDUCT
 2. CRIMINAL DAMAGE OF PROPERTY

DOB: 09/29/79

DOC: 01/20/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement the Court has considered and reviewed the record of the proceedings from the trial court, exhibits made of record and the Memoranda submitted.

Appellant was charged with Disorderly Conduct and Criminal Damage, both class 1 misdemeanors alleged to have occurred January 20, 1999 in the City of Scottsdale. Defendant was found guilty of both charges after a trial in absentia. The only issue raised on appeal is that the trial court's denial of the Defendant's Motion to Continue the trial date of November 22, 2000 was error.

Generally, the issue of to grant or not grant a continuance is a matter within the sound discretion of a trial court.¹ A trial court's ruling on a motion to continue should not be disturbed in the absence of a clear abuse of discretion and resulting prejudice to the party whose motion was denied.²

Clearly, Appellant was prejudiced by the denial of his motion to continue: The trial was held in his absence. However, the trial judge noted when he denied Defendant's Motion to Continue the November 22nd trial date that the Defendant had two prior failures to appear where warrants were issued and that Appellant was provided notice in October advising him of the trial. Appellant's Motion to Continue was received by the court the day prior to the scheduled trial. The reasons stated by Appellant in his motion were that he did not wish to miss college classes. The record reflects that a previous motion to continue (August 29, 2000) was submitted by Appellant wherein he stated the reason for the continuance was because he did not wish to miss the first week of classes. Having continued the case previously to accommodate Appellant's college class schedule, it was not unreasonable for the court to deny a continuance based upon similar reasons.

THIS COURT FINDS no abuse of discretion by the trial judge in denying the Defendant's Motion to Continue the trial.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the trial court.

IT IS FURTHER ORDERED remanding this case back to the Scottsdale City Court for further proceedings.

¹ *State v. Cook*, 172 Ariz. 122, 834 P.2d 1267 (App. 1990), citing *State v. Amarillas*, 141 Ariz. 620, 688 P.2d 628 (1984).

² *State v. Jackson*, 157 Ariz. 589, 760 P.2d 589 (App.1988); *State v. Amarillas*, *supra*.